

GAMBLING AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Craig Hall

LONG TITLE

General Description:

This bill modifies provisions relating to gambling.

Highlighted Provisions:

This bill:

- ▶ defines the term "fringe gaming device";
- ▶ modifies the offense of gambling to include the use of a fringe gaming device; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-1101, as last amended by Laws of Utah 2012, Chapters 27 and 157

76-10-1102, as last amended by Laws of Utah 2012, Chapter 157

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-10-1101** is amended to read:

76-10-1101. Definitions.

As used in this part:



(1) (a) "Fringe gambling" means any gambling, lottery, or video gaming device which is:

(i) given, conducted, or offered for use or sale by a business in exchange for anything of value; or

(ii) given away incident to the purchase of other goods or services.

(b) "Fringe gambling" does not ~~mean~~ include a promotional activity that is clearly ancillary to the primary activity of a business.

(c) Determination of whether a promotional activity is clearly ancillary under Subsection (1)(b) is by consideration of the totality of the circumstances, which may include one or more of these factors:

(i) the manner in which the business is marketed, advertised, or promoted;

(ii) whether and the degree to which the business provides instructions regarding the use or operation of the promotional activity, as compared to the use or operation of the goods or services sold by the business;

(iii) the availability and terms of any free play option to engage in the promotional activity;

(iv) whether any contest, sweepstakes, or other promotional entries provided to customers who purchase goods or services from the business provide any advantage in winning a prize over any advantage provided to participants in the promotional activity who do not purchase goods or services from the business;

(v) whether the goods or services promoted for purchase by the business are on terms that are commercially reasonable; and

(vi) whether any prize won by participation in the promotion may be parlayed into one or more additional opportunities to win an additional prize.

(2) "Fringe gaming device" means a device that provides the user:

(a) a card, credit, or product in exchange for anything of value; and

(b) along with the card, credit, or product, the opportunity to participate in a contest, game, gaming scheme, or sweepstakes with a potential monetary return or outcome based on an element of chance.

~~[(2)]~~ (3) (a) "Gambling" means risking anything of value for a return or risking anything of value upon the outcome of a contest, game, gaming scheme, or gaming device

when the return or outcome:

(i) is based upon an element of chance; and

(ii) is in accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome.

(b) "Gambling" includes a lottery and fringe gambling.

(c) "Gambling" does not include:

(i) a lawful business transaction; or

(ii) playing an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.

~~[(3)]~~ (4) "Gambling bet" means money, checks, credit, or any other representation of value.

~~[(4)]~~ (5) "Gambling device or record" means anything specifically designed for use in gambling or used primarily for gambling.

~~[(5)]~~ (6) "Gambling proceeds" means anything of value used in gambling.

~~[(6)]~~ (7) "Internet gambling" or "online gambling" means gambling or gaming by use of:

(a) the Internet; or

(b) any mobile electronic device that allows access to data and information.

~~[(7)]~~ (8) "Lottery" means any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining property, or portion of it, or for any share or any interest in property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name it is known.

~~[(8)]~~ (9) "Video gaming device" means any device that possesses all of the following characteristics:

(a) a video display and computer mechanism for playing a game;

(b) the length of play of any single game is not substantially affected by the skill, knowledge, or dexterity of the player;

(c) a meter, tracking, or recording mechanism that records or tracks any money, tokens, games, or credits accumulated or remaining;

(d) a play option that permits a player to spend or risk varying amounts of money,

tokens, or credits during a single game, in which the spending or risking of a greater amount of money, tokens, or credits:

- (i) does not significantly extend the length of play time of any single game; and
- (ii) provides for a chance of greater return of credits, games, or money; and
- (e) an operating mechanism that requires inserting money, tokens, or other valuable consideration in order to function.

Section 2. Section **76-10-1102** is amended to read:

76-10-1102. Gambling.

(1) A person is guilty of gambling if the person:

- (a) participates in gambling, including any Internet or online gambling;
- (b) knowingly permits any gambling to be played, conducted, or dealt upon or in any real or personal property owned, rented, or under the control of the actor, whether in whole or in part; ~~or~~
- (c) knowingly allows the use of any video gaming device or fringe gaming device that is:

- (i) in any business establishment or public place; and
- (ii) accessible for use by any person within the establishment or public place~~[-]; or~~
- (d) knowingly uses a fringe gaming device with intent to participate in gambling.

(2) Gambling is a class B misdemeanor, except that any person who is convicted two or more times under this section is guilty of a class A misdemeanor.

(3) (a) A person is guilty of a class A misdemeanor who intentionally provides or offers to provide any form of Internet or online gambling to any person in this state.

(b) Subsection (3)(a) does not apply to an Internet service provider or hosting company as defined in Section **76-10-1230**, a provider of public telecommunications services as defined in Section **54-8b-2**, or an Internet advertising service by reason of the fact that the Internet service provider, hosting company, Internet advertising service, or provider of public telecommunications services:

- (i) transmits, routes, or provides connections for material without selecting the material; or
 - (ii) stores or delivers the material at the direction of a user.
- (4) If any federal law is enacted that authorizes Internet gambling in the states and that

121 federal law provides that individual states may opt out of Internet gambling, this state shall opt
122 out of Internet gambling in the manner provided by federal law and within the time frame
123 provided by that law.

124 (5) Whether or not any federal law is enacted that authorizes Internet gambling in the
125 states, this section acts as this state's prohibition of any gambling, including Internet gambling,
126 in this state.

Legislative Review Note
Office of Legislative Research and General Counsel